

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Amanda Nespoli	Team: Team # 3	CCRB Case #: 200500510	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/16/2005 2:15 PM, Wednesday, 01/26/2005	Location of Incident: In front of Victor's Barbershop on Linden Blvd & 223rd Street	Precinct: 105	18 Mo. SOL 7/16/2006	EO SOL 7/16/2006	
Date/Time CV Reported Sun, 01/16/2005 4:15 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 01/16/2005 4:15 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Salato	24592	926403	105 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robert Rizzotto	12127	918229	105 PCT
2. POM Shawn Gallagher	01438	917655	105 PCT
3. POM Christophe Deluise	06306	892952	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Salato	Abuse: PO Anthony Salato stopped and questioned § 87(2)(b) [REDACTED]	
B.POM Anthony Salato	Abuse: PO Anthony Salato stopped and questioned § 87(2)(b) [REDACTED]	
C.POM Anthony Salato	Abuse: PO Anthony Salato refused to provide his name and shield number to § 87(2)(b) [REDACTED]	

## Synopsis

§ 87(2)(b) filed this complaint via e-mail to the CCRB on January 26, 2005. § 87(2)(b) stated that at approximately 2:15 p.m. on January 16, 2005 he was in Victor's Barbershop on 223<sup>rd</sup> Street and Linden Boulevard in Queens when two uniformed police officers entered the barbershop and requested to speak to § 87(2)(b) a customer in the barbershop. The officers asked § 87(2)(b) to step outside and requested his identification (Allegation A). § 87(2)(b) was subsequently arrested outside of the barbershop. § 87(2)(b) stated that the officers used force against § 87(2)(b) while placing him in the police vehicle. § 87(2)(b) went outside to inquire of § 87(2)(b)'s arrest and an officer requested his identification (Allegation B). § 87(2)(b) further alleged that he asked one of the officers present for his name and shield number to which he refused (Allegation C).

§ 87(2)(g)

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b) provided three statements regarding this incident. He provided his first statement when he filed this complaint via e-mail on January 16, 2005 (Enc. 6-6C and 7-7A). He provided a second statement during a phone conversation with the CCRB on January 20, 2005 (Enc. 8). § 87(2)(b) provided his third statement during his CCRB interview on January 30, 2005 (Enc. 9-9C). § 87(2)(g)

§ 87(2)(b) stated that at approximately 2:15 p.m. on January 16, 2005 he was waiting for a haircut at Victor's barbershop located on 223<sup>rd</sup> Street and Linden Boulevard in Queens. Also present in the barbershop were three barbers; § 87(2)(b) a mentally disabled customer named § 87(2)(b) and four to five additional patrons. While waiting in the barbershop an officer in uniform, PO1, described by § 87(2)(b) as a white male officer, 5'6", stocky build, in his thirties, with short brown hair, identified by shield number as PO Anthony Salato, entered the barbershop. PO Salato pointed at § 87(2)(b) and stated, "You come here." § 87(2)(b) complied and went outside with PO Salato and provided his driver's license to him. A few minutes later, § 87(2)(b) returned to the barbershop. A second officer, PO2, described by § 87(2)(b) as a white male officer, in uniform, slim, identified by the CCRB as PO Robert Rizzotto, waited by the door of the barbershop while PO Salato spoke to § 87(2)(b). § 87(2)(b) stated that PO Rizzotto did not interact with him or the patrons of the barbershop. A third officer, PO3, described as a white male officer in uniform, identified by the CCRB as PO Shawn Gallagher, remained outside of the barbershop by an unmarked green Chevy Impala. Approximately three to five minutes later PO Salato returned to the barbershop and informed § 87(2)(b) that he was going to be arrested but did not provide a reason why. PO Salato handcuffed § 87(2)(b) and escorted him outside. § 87(2)(b) and those present in the barbershop followed them outside. § 87(2)(b) asked § 87(2)(b) if he wanted him to call his mother to which he stated that he did. As § 87(2)(b) was walking to his car, he observed PO Salato push § 87(2)(b) into the backseat of the police car. § 87(2)(b) stated that § 87(2)(b) was not resisting arrest. § 87(2)(b) obtained a piece of paper and a pen out of his car, which was parked in front of the barbershop. § 87(2)(b) asked PO Salato for his badge number to which he did not respond. § 87(2)(b) asked PO Salato again for his badge number again however he refused. PO Salato stated to § 87(2)(b) "Oh you want to file a complaint on me because I am doing my job." § 87(2)(b) stated to PO Salato, "It is the law for you to provide me with your badge number, can I have it" to which PO Salato again refused. PO Salato asked § 87(2)(b) if the car he was standing near was his vehicle to which he stated that it was. PO Salato asked § 87(2)(b) for his license and registration, which he provided. § 87(2)(b) stated that he waited outside of the barbershop for approximately a half an hour while PO Salato verified his information inside the police vehicle. § 87(2)(b) informed PO Salato that he was going back into the barbershop and that when he finished running his information he could return his

paperwork. § 87(2)(b) returned to the barbershop and shortly thereafter PO Salato entered the barbershop and returned his information. § 87(2)(b) stated that PO Salato informed him that § 87(2)(b) had been arrested because he had an outstanding warrant. PO Salato stated to § 87(2)(b) that he should mind his business and not interfere with police business. Prior to the officers driving away, § 87(2)(b) looked through the windshield of the police vehicle and wrote down PO Salato's badge number.

## **Results of Investigation**

### **Witness Statements**

§ 87(2)(b) was interviewed by the CCRB on March 14, 2005 (Enc. 10-10B). § 87(2)(b) stated that on January 16, 2005, § 87(2)(b) stated that there were approximately ten to twelve additional patrons inside the barbershop. As an unmarked blue Chevy police vehicle pulled into a parking lot outside of the barbershop, a customer named § 87(2)(b) entered the barbershop and sat in the waiting area. § 87(2)(b) stated that it seemed that § 87(2)(b) was hiding from the police since he entered the barbershop at the same time that the police vehicle entered the parking lot. A minute later PO Salato and PO Rizzotto came to the doorway of the barbershop. PO Gallagher remained in the back seat of the police vehicle. PO Salato pushed the barbershop door open and asked § 87(2)(b) to step outside and § 87(2)(b) complied. PO Rizzotto remained by the barbershop door. § 87(2)(b) followed PO Salato and § 87(2)(b) handed his identification to PO Rizzotto. PO Salato and PO Rizzotto returned to the police vehicle and checked § 87(2)(b)'s identification. § 87(2)(b) returned to the barbershop and stated that the officers informed him that he had a warrant he needed to take care of. PO Salato and PO Rizzotto returned to the barbershop and informed § 87(2)(b) that he had a warrant out for his arrest and returned his identification. PO Salato and PO Rizzotto explained to § 87(2)(b) that they gave him a chance but because "he was running his mouth" he was under arrest. PO Salato handcuffed § 87(2)(b). § 87(2)(b) was taken to the police vehicle. § 87(2)(b) stated that § 87(2)(b) one of the customers, was talking to § 87(2)(b) by the barbershop door. § 87(2)(b) asked the officers why they were arresting § 87(2)(b) and PO Salato advised § 87(2)(b) to mind his business. § 87(2)(b) followed the officers outside. § 87(2)(b) and the patrons in the barbershop followed. § 87(2)(b) took a pencil and paper out of his car with which § 87(2)(b) believed § 87(2)(b) had written PO Salato's badge number. § 87(2)(b) asked PO Rizzotto for his name and badge number and in response PO Rizzotto asked § 87(2)(b) if a car he was standing by belonged to him to which he replied that it was. PO Rizzotto asked § 87(2)(b) for his license and registration and § 87(2)(b) provided it to him. PO Salato and PO Rizzotto ran § 87(2)(b) license and registration. PO Salato and PO Rizzotto returned to § 87(2)(b) and PO Rizzotto informed § 87(2)(b) that he was going to be issued a summons for parking too far from the curb. § 87(2)(b) returned to the barbershop where § 87(2)(b) began cutting his hair. A few minutes later PO Salato and PO Rizzotto returned to the barbershop and PO Rizzotto returned § 87(2)(b) information. The officers stated that they were just doing their jobs and that § 87(2)(b) wouldn't like it if someone had interfered with his work. The officers left the barbershop.

§ 87(2)(b) was presented with photo series one on March 14, 2005 (Enc. 11-11E). The photo which consisted of PO Salato, whose shield number was provided by § 87(2)(b) and his partners, PO Rizzotto and PO Gallagher as identified by the roll call for the incident date. § 87(2)(b) indicated that the officer photo in the second position, PO Anthony Salato, might have been one of the officers present for the January 16, 2005 incident. § 87(2)(b) did not recall the other two officers in the photos.

§ 87(2)(b) further alleged that at approximately 7:00 p.m. on January 26, 2005, two uniformed officers came into Victor's Barbershop. § 87(2)(b) was seated in the barbershop. One of the officers, described as a white male, Italian, dark skin, dark hair, named Delucci, requested that § 87(2)(b) and § 87(2)(b) provide their barber's licenses but did not provide a reason why. § 87(2)(b) The two officers stepped outside and began talking. § 87(2)(b) went outside to speak to PO Delucci and to retrieve his license. PO Delucci wrote § 87(2)(b) license information in a little black book. § 87(2)(b) was unable to hear § 87(2)(b) conversation with the officers. § 87(2)(b) stated that barber inspectors conduct barbers license verification, not the New

York Police Department. § 87(2)(b) stated that these officers did not identify themselves as barber inspectors. § 87(2)(b) was not asked for his barber's license or identification.

### **Attempts to locate civilian witnesses**

Attempts were made to interview § 87(2)(b) and § 87(2)(b). A total of nine calls were placed to Vincent's Barbershop to speak to these individuals however the employees only took one message from the CCRB. During a February 18, 2005 phone conversation § 87(2)(b) set an interview appointment for February 28, 2005 to which he did not appear nor contact the CCRB to cancel or reschedule. Letters were sent to § 87(2)(b) on March 1, 2005, April 1, 2005 and June 22, 2005. A letter was sent to § 87(2)(b) on June 22, 2005. Neither § 87(2)(b) nor § 87(2)(b) have contacted the CCRB. During a phone conversation on February 23, 2005 § 87(2)(b) refused to participate in the investigation.

A field visit was not conducted since § 87(2)(b) and § 87(2)(b) have refused to participate in the investigation. For example, during phone calls to Vincent's barbershop to speak with either § 87(2)(b) or § 87(2)(b) refused to take messages and rudely indicate that he was too busy to speak to the CCRB regarding this case. Their statements would not have changed the allegations of this case.

### **Officer identification**

During the incident § 87(2)(b) looked through the police vehicle windshield and subsequently wrote the subject officers shield number. The NYPD personnel database indicated that PO Anthony Salato was assigned to that particular shield. The roll call for tour two on January 16, 2005 (Enc. 22-22H) indicated PO Robert Rizzotto was assigned as his partner. PO Salato stated in his CCRB statement that PO Shawn Gallagher was also assigned as his partner. These officers later verified their involvement in the incident during their CCRB statements.

§ 87(2)(b) stated during his CCRB statement that a uniformed officer by the name of PO Delucci entered Vincent's barbershop on January 26, 2005 and requested identification from the barbers present. A search of the NYPD database returned negative results for PO "Delucci." PO Christopher Deluise of the 105<sup>th</sup> Precinct was the only officer within the database whose name closely reflected that of PO "Delucci."

### **Officer Statements**

PO Rizzotto and PO Salato provided three statements regarding this incident. They provided their first statements in their memo book entries for January 16, 2005 (Enc. 13-13A and 16-16B). They provided their second statements in stop and frisk reports prepared for § 87(2)(b) and § 87(2)(b) on January 16, 2005 (Enc. 12 and Enc. 15-15A). They provided their third statements when they were interviewed by the CCRB on March 29, 2005 (Enc. 14-14A and Enc. 17-17A). PO Gallagher was interviewed by the CCRB on April 9, 2005 (Enc. 19-19A).

#### *Stop and frisk report (Enc. 12)*

The stop and frisk report prepared by PO Salato for § 87(2)(b) indicates that on January 16, 2005 § 87(2)(b) was stopped for obstructing governmental administration. The report further indicates that § 87(2)(b) positioned himself between PO Rizzotto and an individual being handcuffed. The report indicates that § 87(2)(b) was frisked during the stop but that he was not searched. The report indicates that § 87(2)(b) became argumentative and combative after the stop and stated to the officers, "I'm taking your badge numbers down because you bumped into me, all you cops look alike." PO Salato's name, command and tax identification number are clearly legible on the report.

#### *Stop and frisk report (Enc. 15-15A)*

The stop and frisk report prepared by PO Rizzotto for § 87(2)(b) indicates that on January 16, 2005 he was stopped and questioned for "engaging in actions indicative of acting as a lookout" and that he was further more suspected of robbery. The report indicates that § 87(2)(b) had a suspicious bulge on his person and that he was frisked and searched. As a result of the search, a boxcutter and hammer were obtained from his person. Subsequently § 87(2)(b) was arrested for § 87(2)(b). PO Rizzotto's name, command and tax identification number are clearly legible on the report.

*PO Anthony Salato, PO Robert Rizzotto and PO Shawn Gallagher*

The officers stated that the area surrounding the incident location had recently had a series of gunpoint robberies during the week of the incident. As a result, the officers were assigned to the Robbery Suppression unit of Anti-crime. The officers were assigned to an unmarked green Chevy Impala; PO Rizzotto was the driver, PO Salato the front passenger and PO Gallagher in the backseat. On January 16, 2005 the officers were travelling eastbound on Linden Boulevard when they observed a black male described as 5'8, stocky, baldheaded, later identified by the CCRB as § 87(2)(b). PO Salato stated that § 87(2)(b) was holding a backpack and standing in the doorway of a bodega. PO Rizzotto stated that they observed § 87(2)(b) standing on the side of a bodega looking around the area. When § 87(2)(b) observed the officers, he walked eastbound on Linden Boulevard. PO Salato stated that he observed a bulge in § 87(2)(b)'s right rear pocket that appeared to be a 4-6 inch piece of pipe-like metal with a black rubber piece sticking out. PO Rizzotto stated that he noticed a silver piece of metal sticking out of § 87(2)(b)'s rear right pocket. PO Gallagher did not observe § 87(2)(b) as he was looking for his summonses in his bag. PO Gallagher stated that PO Rizzotto indicated that he was going to stop § 87(2)(b) but did not specify the reason. PO Rizzotto made a U-turn and as he did so § 87(2)(b) entered a barbershop. The officers exited the police vehicle and PO Rizzotto and PO Salato entered the barbershop and PO Gallagher remained at the police car. PO Salato addressed § 87(2)(b) who responded by stating, "What do you want I'm getting a haircut." The officers stated that since § 87(2)(b) had a bald and cleanly shaved head, raised their level of suspicion. PO Rizzotto asked § 87(2)(b) where his backpack was and § 87(2)(b) pointed to the bag which was a few seats away. PO Salato asked § 87(2)(b) what was in the bag and § 87(2)(b) responded by stating that there was nothing in the bag and not to worry about it. PO Rizzotto asked § 87(2)(b) to step outside for questioning. PO Rizzotto went to get the back pack and a black male customer of the barbershop, described as being in his mid 30's and heavy set, later identified as § 87(2)(b) stepped in front of PO Rizzotto. PO Rizzotto told § 87(2)(b) to step out of the way and stated that he needed to get the backpack. PO Salato stated that he then grabbed the defendant's bag. § 87(2)(b) told § 87(2)(b) not to listen to the officers and to remain in the barbershop and he then intentionally bumped himself into PO Rizzotto. PO Salato told § 87(2)(b) that he would explain the situation to him and advised him to let them handle his business. PO Salato patted down § 87(2)(b) for weapons, but did not search his pockets. § 87(2)(b) was compliant with the frisk. PO Salato, PO Rizzotto and the defendant went outside. § 87(2)(b) followed them and became persistent asking why they were harassing the defendant. PO Rizzotto grabbed § 87(2)(b)'s back pocket where he found a hammer, knife, 6-8 inch hacksaw blade, box cutter and gloves. PO Gallagher stated that he frisked § 87(2)(b) and found a hammer and a pipe in his rear pocket. PO Rizzotto asked § 87(2)(b) for identification and ran it for warrants, which returned an active warrant for him. PO Salato also prepared a stop and frisk report for him. PO Salato asked § 87(2)(b) for identification. § 87(2)(b) retrieved his identification from his vehicle and gave it to PO Salato who wrote § 87(2)(b) information down. § 87(2)(b) informed PO Salato that he was going back into the barbershop and advised him to return his license when he was through. After running § 87(2)(b) identification it was determined that he had no active warrants. PO Salato went into barbershop and returned § 87(2)(b) identification. PO Salato informed § 87(2)(b) that it would be in his best interest to allow the police to handle their business. § 87(2)(b) stated to PO Salato, "I want your name and badge number." PO Salato wrote his name and shield number on a piece of scratch notebook paper and gave it to § 87(2)(b). § 87(2)(b) did not ask PO Rizzotto or PO Gallagher for his name or shield number. PO Gallagher stated that § 87(2)(b) did not request any officers' name or shield number. PO Gallagher placed § 87(2)(b) into the back of the police vehicle and sat in the back of the vehicle with him. § 87(2)(b) who was described as being angry, argumentative and combative during the incident, was not interfering though he came in close proximity to the officers. The officers indicated that § 87(2)(b) was cooperative and that no force was necessary to effect his arrest. PO Salato stated that at one point the defendant stated that he was working on his house. The defendant provided his phone number and PO Rizzotto spoke to the defendant's mother. The defendant's mother told PO Rizzotto that the defendant had not been home all day and had not worked on his house. PO Rizzotto filled out a stop and frisk report for § 87(2)(b). § 87(2)(b) was arrested and charged with § 87(2)(b).

PO Christopher Deluise of the 105<sup>th</sup> Precinct was interviewed by the CCRB on May 13, 2005 (Enc. 21-21A). PO Deluise stated that on January 26, 2005 he was assigned to barrier detail arranging barricades in Manhattan and therefore was not in Queens on January 26, 2005.

*105<sup>th</sup> Precinct roll call for January 16, 2005 (Enc. 22-22H)*

*Criminal Complaint number* § 87(2)(b) (23-23A)

§ 87(2)(a) 160.50

The Online-booking sheet for § 87(2)(b) indicates that § 87(2)(b) was arrested for § 87(2)(a) 160.50 § 87(2)(b) and also for an active warrant on § 87(2)(b). PO Rizzotto is listed as § 87(2)(b)'s arresting officer of § 87(2)(b).

Property voucher number § 87(2)(b) regarding § 87(2)(b)'s arrest indicate that a black metal hammer, a box cutter, an eight inch metal file, and one pair of black cloth gloves were obtained from § 87(2)(b)'s person. Property vouchers number § 87(2)(b) and § 87(2)(b) contain personal items obtained from § 87(2)(b).

The prisoner holding pen roster for January 16, 2005 indicates that § 87(2)(b) entered the holding pen at 2:45 p.m. The roster further indicates that § 87(2)(b) was taken to central booking at 7:08 p.m.

The 105<sup>th</sup> Precinct command log indicates that at 2:46 p.m. on January 16, 2005 § 87(2)(b) was brought to the stationhouse. PO Rizzotto's name appears in this command log entry.

**§ 87(2)(a) 160.50**

Office of Court Administration (Enc. 29-29A)

**[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]**

The New York Police Department warrant investigative data form indicates § 87(2)(b)'s active warrant number § 87(2)(b) at the time of his arrest on January 16, 2005.

The New York State Police warrant check report indicated that a license check was conducted for § 87(2)(b) on January 16, 2005. This check did not return any open warrants for § 87(2)(b)

*Officer CCRB history*

PO Salato has no prior substantiated CCRB history (Enc. 4-4A).

§ 87(2)(b) history

§ 87(2)(b) has no prior CCRB history (Enc. 5)

**Conclusions and Recommendations**

*Undisputed facts*

It is undisputed that PO Salato stopped and questioned § 87(2)(b) and § 87(2)(b)

*Disputed Facts*

§ 87(2)(g)

*Officer credibility*

§ 87(2)(g)

*Civilian Credibility*

§ 87(2)(g)

**Allegations not plead**

§ 87(2)(g)

PO Deluise was interviewed in connection with the January 26, 2005 incident, however he indicated that he was assigned to detail in Manhattan and was not in duty in Queens on January 26, 2005. § 87(2)(b) did not cooperate with this investigation. § 87(2)(g)

**Allegation A: PO Anthony Salato stopped and questioned § 87(2)(b)**

§ 87(2)(b) stated that on January 16, 2005, PO Anthony Salato stopped and questioned § 87(2)(b) at Victor's Barbershop located at 223 Linden Boulevard in Queens. PO Salato and PO Rizzotto both stated that the incident location is within a region in which several gunpoint robberies had occurred within the week of the incident. PO Salato stated that he observed § 87(2)(b) holding a backpack and standing in the doorway of a bodega. And PO Rizzotto stated that he observed § 87(2)(b) surveying the area. Both officers stated that when § 87(2)(b) observed the officers he began walking Eastbound on Linden Boulevard. PO Salato stated that he observed an object that appeared to be a 4-6 inch piece of pipe-like metal with a black rubber piece sticking out of § 87(2)(b)'s pocket. PO Rizzotto stated that he also noticed this object protruding from § 87(2)(b)'s right rear pocket. Upon making a U-turn in the police vehicle, § 87(2)(b) entered Victor's barbershop. § 87(2)(b) indicated that § 87(2)(b) seemed to be evading the police.

As discussed in the Legal Bureau pamphlet entitled, “Stop, Question and Frisk,” a suspects actions attribute to an officers level of suspicion. The legal pamphlet explains that, “A suspects presence in an area with a high incidence of a particular crime, carrying of objects commonly used in commission of crime, (engaging in) furtive gestures, changing direction or fleeing upon sighting a uniformed police officer, actions indicative of “casing” a victim or crime location, and unusual nervousness” constitute as elements that raise an officers level of suspicion of an individual.

§ 87(2)(g)

**Allegation B: PO Anthony Salato stopped and questioned § 87(2)(b)**

§ 87(2)(b) stated that on January 16, 2005, PO Anthony Salato requested his identification, which he provided to him. § 87(2)(g)

Under Penal Law 195.05, “A person is guilty of obstructing governmental justice when he intentionally obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force, or interference or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved...”

§ 87(2)(g)

**Allegation C: PO Anthony Salato refused to provide his name and shield number to § 87(2)(b)**

§ 87(2)(b) alleged that during the incident on January 16, 2005 he requested PO Salato’s name and shield number and that PO Salato refused. PO Salato and PO Rizzotto both indicated that § 87(2)(b) requested PO Salato’s shield number and that in response PO Salato wrote the information down on a piece of paper and provided it to § 87(2)(b). § 87(2)(b) stated that he observed PO Salato’s shield number through the police vehicle windshield and wrote the number. § 87(2)(b) stated that § 87(2)(b) wrote PO Salato’s name and shield number. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: